IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1862 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N.B.BARA ASSISTANT TEACHER SCIENCE STREAM

Versus

DISTRICT EDUCATION OFFICER AHMEDABAD

Appearance:

1. Special Civil Application No. 1862 of 2004

MR DHARMESH V SHAH for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 16/02/2005

ORAL JUDGEMENT

Rule. Learned AGP Shri S.P.Hasurkar waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing

for the parties the petition is taken up for final disposal today.

2. In the present petition, the petitioner has prayed for a direction to release the amount of salary of the petitioner for the period between 2.1.02 to 31.1.03. During the pendency of this petition, the petitioner received salary for the period between May 2002 to January 2003. By order dated 29.9.04, this Court directed the District Education Officer, Ahmedabad City to make necessary inquiry and submit a report after hearing the petitioner and the Principal of the City High School, Ahmedabad. Pursuant to the said order, the petitioner was given an opportunity to represent his case. He filed a representation dated 29th October 2004 and placed several documents on record before the District Education Officer. The District Education Officer, however, by the order dated 6.12.04 was pleased to turn down the request of the petitioner for being paid salary for the remaining period.

3. The counsel for the petitioner seeks permission to produce the said order of DEO on record. Permission granted. The counsel for the petitioner also seeks permission to amend the prayer clause to challenge the said order. The said permission is also granted.

4. It is the submission of the learned counsel for the petitioner that the petitioner along with his representation dated 29.10.04 produced several documents which would suggest that upon his transfer on being declared surplus, the petitioner immediately reported for duty at the school where he was so transferred. The documents also suggest that though the petitioner reported for duty, the concerned school, viz. Muktijivan school, did not permit him to join duty for want of vacancy and this aspect of the matter was brought to the notice of the authorities by the petitioner immediately. Counsel for the petitioner submits that the authorities have totally lost sight of these important documents and without any reference to these documents, the impugned order has been passed by the District Education Officer.

5. From the perusal of the order dated 6.12.04, it appears that the District Education Officer has not considered the documents produced by the petitioner along with his representation dated 29.10.04. The contention of the petitioner is that he had in fact reported for duty at the place of his transfer but was prevented by the concerned school from discharging his duties and that this fact was brought to the notice of the authorities by

the petitioner immediately. It will, therefore, be necessary for the District Education Officer to go into this factual aspect of the matter and consider the claim of the petitioner in light of the factual conclusions that he may arrive at. It will, therefore, be necessary that the entire exercise is undertaken again. For this purpose, the impugned order dated 6.12.04 is set aside and the District Education Officer is directed to decide the issue afresh in light of the observations made hereinabove. The District Education Officer shall also consider the grievance of the petitioner that the deduction of Rs.33,520/= is unauthorized. If there be any need, it will be open for the District Education Officer to seek clarification from the Principal of the City High School, Ahmedabad. The District Education Officer, shall pass fresh speaking order within a period of two months from the date of receipt of a copy of this order. In case the order is adverse to the petitioner, liberty is granted to the petitioner to revive this petition.

6. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)
(vjn)